

DECISION



DIGEST - L - G G M

THE COMPTROLLER GENERAL
OF THE UNITED STATES

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WASHINGTON, D. C. 20548

Modified in part by B-193573, Dec. 19, 1979

FILE: B-193573

DATE: January 8, 1979

MATTER OF: Applicability of FY 1979 5.5 percent pay increase ceiling to employees of Saint Lawrence Seaway Development Corporation

DIGEST: User fee toll charges collected by the Saint Lawrence Seaway Development Corporation, a wholly Government owned corporation under 31 U.S.C. § 846, are considered appropriated funds, inasmuch as such funds have been appropriated by Congress in the Department of Transportation and Related Agencies Appropriations Act, 1979, for use by the Corporation and are subject to law and regulations controlling expenditure of such funds. However, the 5.5 percent pay increase ceiling for wage increases during FY 79 for prevailing rate employees contained in section 614 (a) of the Treasury, Postal Service and General Government Appropriations Act, 1979, Pub. L. 95-429, (5 U.S.C. § 5305 note) is not applicable to prevailing rate employees of the Corporation because that provision excludes from coverage employees whose wage adjustments are not based on wage surveys under 5 U.S.C. § 5343. Corporation employees negotiate wage adjustments and are exempt by law from provisions of 5 U.S.C. § 5343.

This decision is in response to a request from the Comptroller of the Saint Lawrence Seaway Development Corporation (Corporation) for a decision on whether the pay increase ceiling of 5.5 percent, established by section 614 of the Treasury, Postal Service and General Government Appropriations Act, 1979, Pub. L. No. 95-429, October 10, 1978, 92 Stat. 1018 (5 U.S.C. § 5305 note) is applicable to certain Corporation employees.

The Corporation is a wholly owned Government corporation, as defined in 31 U.S.C. § 846 (1976), which operates as an administration of the Department of Transportation. It pays all its expenses, including employee salary and wage costs, out of revenues which it derives from tolls assessed on vessels and cargoes that use Corporation facilities.

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The Corporation's prevailing rate employees--i.e. those whose wages are established by reference to rates prevailing in the area--are represented by Local 1968 of the American Federation of Government Employees (AFGE) as their exclusive bargaining agent. The agreement between Local 1968 and the Corporation requires that the basic wage rate schedule be revised each November, using the same percentage rate adjustment negotiated for employees at the Massena plant of the Power Authority of the State of New York in their current contract. As a result of the most recent wage data from the Massena plant, the basic wage rate of pay for Corporation prevailing rate employees was supposed to be increased by 7.3 percent effective November 19, 1978. Because of the possible application of annual pay adjustment ceiling restrictions contained in the Treasury, Postal Service, and General Government Appropriations Act, 1979, Pub. L. No. 95-429, supra, the Corporation decided to limit the increase to 5.5 percent, pending receipt of our decision, with the understanding that any adjustment required by our decision would be made retroactively to November 19, 1978.

The Corporation in effect requests a ruling on the following questions:

1. Inasmuch as the wages of Corporation prevailing rate employees are paid from revenues derived from user fees and not from Treasury funds directly appropriated by Congress, are such wage expenditures subject to restrictions on the use of appropriated funds?
2. If question 1 is answered in the affirmative, does the 5.5 percent wage increase ceiling contained in section 614 of the Treasury, Postal Service and General Government Appropriations Act, 1979, Pub. L. No. 95-429, supra, apply to wage increases granted Corporation prevailing rate employees during FY 79?

The Corporation was established pursuant to authority contained in 33 U.S.C. Chapter 19. Authorized activities of the Corporation are set forth in 33 U.S.C. § 984, which then sets up a fund to be credited with amounts received from the various activities and authorizes use of these amounts for the expenses of the Corporation. The Corporation is funded by the Congress pursuant to the procedures set forth in 31 U.S.C. § 849 for wholly owned Government corporations, which require the annual submission of the Corporation budget to Congress in order that legislation may be enacted appropriating funds available to the Corporation or in the Treasury for operating and administrative expenses of the Corporation.

Congress appropriated funds for the operation of the Corporation for the year ending September 30, 1979, in Title IV of the Department of Transportation and Related Agencies Appropriation Act, 1979, Pub. L. No. 95-335, August 4, 1978, 92 Stat. 444, which reads as follows:

"SAINT LAWRENCE SEAWAY DEVELOPMENT
CORPORATION

"The Saint Lawrence Seaway Development Corporation is hereby authorized to make such expenditures, within the limits of funds and borrowing authority available to such Corporation, and in accord with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act, as amended, as may be necessary in carrying out the programs set forth in the budget as hereinafter provided.

"Limitation on Administrative
Expenses, Saint Lawrence Seaway
Development Corporation

"Not to exceed \$1,280,000 shall be available for administrative expenses which shall be computed on an accrual basis, including not to exceed \$3,000 for official entertainment expenses to be expended upon the approval or authority of the Secretary of Transportation: Provided, That Corporation funds shall be available for the hire of passenger motor vehicles and aircraft, operation and maintenance of aircraft, uniforms or allowances therefor for operation and maintenance personnel, as authorized by law (5 U.S.C. 5901-5902), and \$15,000 for services as authorized by 5 U.S.C. 3109."

We have consistently regarded a statute which authorizes the collection and credit of fees to a particular fund for specified purposes and which makes the fund available for obligation and expenditure as authorized as constituting an appropriation. 57 Comp. Gen. 311, 313 (1978) and 35 id. 615 (1956). In light of the provisions contained in 33 U.S.C. § 984(b) supra, and the Department of Transportation and Related Agencies Appropriation Act, 1979, Pub. L. No. 95-335, supra, pertaining to the Corporation, it is clear that funds made available to the Corporation must be regarded as appropriated, whether derived from user fees or any other source. See B-67175, July 16, 1947. Accordingly, we answer question 1 above in the affirmative: wage as well as other Corporation expenditures are considered as being made from appropriated funds and are subject to any restrictions applicable to the expenditure of appropriated funds.

However, for the reasons set forth below, we do not think that the wage increase ceiling applies to the particular salary expenditures in question. The 5.5 percent wage increase ceiling is contained in section 614 of the Treasury, Postal Service and General Government Appropriations Act, 1979, supra, which provides as follows:

"(a) No part of any of the funds appropriated for the fiscal year ending September 30, 1979, by this Act or any other Act, may be used to pay the salary or pay of any individual in any office or position in an amount which exceeds the rate of salary or basic pay payable for such office or position on September 30, 1978, by more than 5.5 percent, as a result of any adjustments which take effect during such fiscal year under--

"(1) section 5305 of title 5, United States Code;

"(2) any other provision of law if such adjustment is determined by reference to such section 5305; or

"(3) section 5343 of title 5, United States Code, if such adjustment is granted pursuant to a wage survey (but only with respect to prevailing rate employees described in section 5342(a) (2) (A) of that title).

"(b) For the purpose of administering any provision of law, rule, or regulation which provides premium pay, retirement, life insurance, or other employee benefit, which requires any deduction or contribution, or which imposes any requirement or limitation, on the basis of a rate of salary or basic pay, the rate of salary or basic pay payable after the application of this section shall be treated as the rate of salary or basic pay."

Since the Saint Lawrence Seaway Development Corporation is a wholly owned Government corporation, it meets the definition of "agency", set forth in 5 U.S.C. 5342(a) and if adjustments for its prevailing rate employees were made pursuant to a wage survey, expenditures for wage adjustments would be subject to the limitations of section 614(a) (3), quoted above. However, under the terms of that section, the annual pay increase ceiling is made applicable only to pay adjustments for prevailing rate employees granted pursuant to a wage survey under 5 U.S.C. § 5343. We have been advised informally that Corporation prevailing rate employees have never had their wage adjustments determined by wage surveys under 5 U.S.C. § 5343, but have negotiated their wages since the early 1960's. Under section 9(b) of Pub. L. No. 92-392 (August 19, 1972, 86 Stat. 558, 5 U.S.C. § 5343 note), which provides that the wage

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survey system of Pub. L. No. 92-392 does not abrogate, modify, or otherwise affect provisions of contracts in effect on its date of enactment, and does not impair the right to continue to set wages by contract, the Corporation's employees are exempt from the requirements of 5 U.S.C. § 5343 governing wage surveys and wage adjustments for prevailing rate employees. See 57 Comp. Gen. 259 (1978), 56 id. 360, 363 (1977) and 55 id. 162 (1975). In this connection, Congress reenacted this exemption in section 704 of the Civil Service Reform Act of 1978, Pub. L. No. 95-454, October 13, 1978, 92 Stat. 1218 (5 U.S.C. § 5343 note.).

Because section 614 (a) (3) ^{50 USC 5305(a)(3)} of Pub. L. No. 95-429 only places a 5.5 percent ceiling on wage adjustments granted as a result of wage surveys under 5 U.S.C. § 5343, it is not applicable to negotiated wage adjustments of Corporation prevailing rate employees, who are exempt from the requirements of 5 U.S.C. § 5343 by virtue of section 9 (b) of Pub. L. No. 92-392, supra, and section 704 of Pub. L. No. 95-454, supra. Therefore, the Corporation may legally institute the proposed wage rate increase and make retroactive pay adjustments effective as of November 19, 1978, under the authority contained in 5 U.S.C. § 5596 and 5 C.F.R. Part 550, subpart H.

R. J. K. 114
Deputy Comptroller General
of the United States